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January 28, 1997

VIA FEDERAL EXPRESS

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington DC 20554

Re: In the Matter of Access Charge Reform
Docket No.: 96-262

Dear Secretary:

Enclosed for filing are an original and sixteen (16) copies of the Initial Comments and Summary of the Minnesota Independent Coalition on the Access Charge Reform.

Also enclosed for submission is a diskette containing the above-mentioned Initial Comments and Summary. The diskette has been formatted pursuant to the instructions in the Notice of Proposed Rulemaking.

If you should have any questions regarding the enclosures or other issues with respect to the filing submitted on behalf of the Minnesota Independent Coalition please feel free to contact the undersigned.

Very truly yours,

Richard J. Johnson

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263
	)	

COMMENTS OF THE MINNESOTA INDEPENDENT COALITION

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Date: January 29, 1997

SUMMARY OF COMMENTS OF MINNESOTA INDEPENDENT COALITION

The following Summary is submitted by the Minnesota Independent Coalition.

The Commission Should Avoid Radical Reductions in Access Revenues of Small LECs. The Commission should avoid any radical reduction of the interstate access revenues of small LECs which would either: 1) increase the funding requirements of the new federal universal service program; 2) shift the revenue requirements to the intrastate jurisdiction (which will be likely to increase local rates in violation of the Act); or 3) lead to the unconstitutional confiscation of LEC property.

Small LECs Should Not Be Compelled To Immediately Change to Flat Rate CCL Recovery. The Commission should allow, but not compel, rate-of-return LECs to apply any new flat rate CCL structure. Any shift by a LEC should be permanent.

Different Flat Rate Charge Mechanisms May Be Appropriate For Large and Small LECs. The Commission should not assume that the recovery mechanism for large LECs is necessarily feasible or appropriate for small LECs because of significant differences between large and small LECs. Use of PICs or bulk billing would be appropriate for small LECs.

Section 254(g) Precludes IXCs From Passing Through to Their Customers Different Flat Rate CCL Charges. Section 254(g) protects customers from incurring different "rates" for "interexchange telecommunications services" between states and within a state. There is no indication that the term "rates" was intended to be limited to usage based rates. Since a flat rate end user charge imposed by an IXC is certainly a charge for "interexchange service," IXC's may not pass through deaveraged flat rate CCL charges to their customers.

The Commission Should Not Forbear Application of Section 254(g). For the reasons noted by the Commission Docket No. 96-61, FCC 96-331 the Commission must not forebear application of Section 254(g) to allow IXCs to recover varying interstate flat rate CCL charges between different states or different intrastate flat rate CCL charges within a state.

Raising the SLC CAP on Second Residential Lines and Multiline Businesses Would Be Inappropriate. Increasing the SLC cap to the LEC's individual interstate loop costs is likely to lead to significant price increases or significantly reduce demand for second lines by residences and all multiline businesses. Such a result is counter productive, inefficient and may lead to mis-reporting which LECs can not prevent. The Act does no prevent averaging of SLCs.

LECs Participating in CEA Offerings Should Not Be Required to Implement Rate Structure Changes that Are Not Appropriate For CEA Providers. The Commission should recognize that certain rate structure changes that are appropriate for larger LEC's are not appropriate for incumbent LEC's that participate in CEA.

The Benefits of Restructuring Should Be Compared to the Costs of Implementing the Restructured Rates. Development of a usage based charge for call-setup would be an appropriate refinement for all LECs because the cost of developing such a charge is not excessive. In contrast, requiring the development of peak/off-peak pricing rates by small LECs is likely to impose significant administrative costs and burdens on the LECs and may be difficult, if not impossible, for some small LECs to complete.

Transport Usage Levels and Patterns Differ Significantly Between Large LECs and Small LECs and Should Be Reflected in Any New Rules. Assuming monthly usage of 9000 MOU per transport circuit is very unrealistic for low volume, rural routes and DS3 circuits are

not used in rural areas to the same extent as in higher volume areas. The Commission should develop more realistic estimates of volume and circuit usage in low density rural areas. The Commission should reassign those costs that are readily identifiable and quantifiable.

LECS Must Be Allowed to Recover All Prudent Investments. If a change to forward looking costs is imposed by the Commission, incumbent LECs, particularly small LECs that have remained under rate-of-return regulation, must be allowed an opportunity to recover all prudently incurred embedded costs. Recovery of the difference between a LEC's embedded costs and TSLRIC costs by a per minute CCL or surcharge, or by bulk-billing to the IXCs, would not violate Section 254.

The Combination of Regulatory Policies and Technological Change Has Led to the Difference Between Forward-looking and Embedded Costs. The adverse impact of all sources of under-depreciation can be directly traced to regulatory policies, including both: 1) universal service requirements imposed on LECs, which require service to customers as their needs arise; and 2) limitations on LECs' depreciation rates imposed by the Commission and state regulatory bodies. The impact is particularly clear for small LECs, which have remained under rate-of-return regulation by the Commission.

Such an impact requires both that the accumulated under-depreciation be recovered, through surcharges, bulk-billing or other appropriate mechanisms. It would be totally inappropriate and unlawful to impose on LEC shareholders the losses resulting from under-depreciation that was required by the Commission and state regulatory agencies.

There Is No Factual Basis to Conclude That Any Small LEC Has Over-Invested. Application of conclusions drawn from the Hatfield Study to small LECs would be completely without foundation because it is widely recognized that the Hatfield Study is based entirely on

data relating to the BOCs and does not reflect cost-data from rural LEC areas. Further, it would be completely unlawful for the Commission to generalize from the possibility of over-investment by some large LECs to a disallowance of embedded costs of other LECs in that category, much less to small LECs in an entirely separate category.

Embedded Investments Should Be Presumed Reasonable Unless the Contrary Is Demonstrated By Another Party. There should be a strong presumption that all embedded investments made by LECs under current law were prudently made and that the LECs should be allowed to recover those amounts. Further, recovery of the costs of those investments from the IXCs have been closely controlled by the Commission and state agencies. The Constitution does not allow LECs to be deprived of recovery of their investments in such circumstances. Similarly, there is no basis to conclude that current investments are no longer "used and useful." To the contrary, it is obvious that embedded investments will continue to be used to carry access traffic.

If a Shift to Forward Looking Costs Is Ordered, a Mechanism for Recovery of The LEC's Embedded Cost Differentials Must Be Established. The development of an appropriate recovery mechanism is critical if a shift to forward looking costs is required, particularly for incumbent LECs that have remained subject to rate-of-return regulation.

The Accumulated Difference Between Embedded and Forward Looking Access Costs Should be Recovered From IXC's. Transfer of a portion of the accumulated under-depreciation to other providers in the telecommunications industry, (through universal service funding) would not be appropriate. A recovery mechanism from IXCs could be based on a charge per MOU or bulk-billed per dollar of revenue.

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COMMENTS OF THE MINNESOTA INDEPENDENT COALITION

The following Comments are submitted by the Minnesota Independent Coalition ("Minn. Indpt. Coal."), in response to the Commission's NOTICE OF PROPOSED RULEMAKING ("NPRM") released December 24, 1996, FCC 96-488. The Minn. Indpt. Coal. is an unincorporated association of over 80 Local Exchange Carriers ("LECs"), providing telephone exchange service and exchange access service in Minnesota. The members of the Minn. Indpt. Coal. provide telephone exchange and exchange access service to over 260,000 access lines in

Minnesota, with the average individual member serving approximately 3,000 access lines. All members of the Minn. Indpt. Coal. are "rural telephone companies."[1]

I. ANY NEW RULES SHOULD REFLECT THE SIGNIFICANT DIFFERENCES BETWEEN PRICE-CAP LECS AND SMALLER LECS.

The NPRM requests comment on the Commission's tentative conclusion to confine the current proceeding to price-cap incumbent LECs, subject to limited exceptions.[2] The rationale limiting this proceeding is based primarily on the fact that the 23 price-cap LECs serve over 90% of all access lines.[3] While the price cap LECs do serve the vast majority of access lines, it is probable that broad policies adopted in this proceeding would be extended to smaller LECs. Accordingly, the Commission should recognize in this proceeding and any subsequent proceeding that policies appropriate for large LECs may not be appropriate for small LECs.

A. The Commission Should Bear In Mind the Important Differences Between Price Cap and Small LECs.

The Commission tentatively concluded to limit this proceeding to price-cap LECs. Such an approach may not be feasible, however, because the broad policies adopted in this proceeding may inevitably be extended to smaller LECs. As a result, it is essential for the Commission to recognize that policies and rules that may be appropriate for price-cap LECs may not be appropriate for smaller LECs. The NPRM notes that the need for access reform is most apparent for price-cap LECs, which may be subject to more competition from use of unbundled network elements sooner than rate-of-return LECs.[4] Further, as discussed below, the transport volumes

[1] See, 47 USC § 153(47).
[2] NPRM, ¶ 53.
[3] NPRM, ¶ 51.
[4] NPRM, ¶ 52.

and network characteristics of large and small LECs are very different.[5] The passage of the Telecommunications Act of 1996 (the "Act") and the Commission's initiative to reform access charges do not change either the fundamental differences between price-cap LECs and smaller LECs or the need for different regulatory approaches. The Commission should recognize, both in this proceeding and any subsequent proceeding relating to smaller LECs, that one size does not necessarily fit all.

B. Interstate Access Charges Account for a Far More Significant Portion of Small LEC Revenues.

A review of the 1995 interstate access revenues per line for 80 members of the Minn. Indpt. Coal., which are based on individual costs for 19 LECs and the NECA average schedule tariffs for 61 LECs, showed the great importance of interstate access revenues. For the 80 Minn. Indpt. Coal. members, interstate access [including the Subscriber Line Charge ("SLC")] provided 39% of total revenues, intrastate access provided 37%, and local service provided 24%.

The significance of interstate access revenues on individual members of the Minn. Indp. Coal. is even more apparent.

In 1995, interstate access revenues:

- exceeded $600 per line ($50 per month) for 4 LECs, affecting approximately 5,000 access lines;
- were between $480 and $600 per line ($40 to $50 per mo.) for 8 LECs, affecting approximately 11,000 access lines;
- were between $360 and $480 per line ($30 to $40 per mo.) for 13 LECs, affecting approximately 27,000 access lines;

[5] See VI below.

- were between $240 and $360 per line ($20 to $30 per mo.) for 30 LECs, affecting approximately 69,000 access lines;
- were between $180 and $240 per line ($15 to $20 per mo.) for 21 LECs, affecting approximately 109,000 access lines;
- and were between $145 and $180 per line ($12 to $15 per mo.) for the remaining 4 LECs, affecting approximately 41,000 access lines.

The results clearly demonstrate the dire impacts on either local rate[6] levels or on the necessary funding levels of the interstate universal service mechanisms[7] that will result if the Commission significantly reduces those interstate access revenues.

The Commission must establish appropriate safeguards against revenue impacts of such magnitude in its reform of interstate access charges.

C. Small LECs Should Be Allowed, But Not Required, To Change Immediately to Flat Rate CCL Recovery.

The NPRM seeks comment on possible revisions to the CCLC structure "so that incumbent price-cap LECs are no longer required to recover any of the NTS costs of the loop from IXCs on a traffic sensitive basis."[8] The NPRM also requests that parties comment on "efficient recovery mechanisms" for NTS local loop costs.[9] The NPRM further notes:

> We invite parties to comment on whether any changes that we adopt to recovery of interstate NTS loop costs for price-cap LECs should be extended to rate-of-return LECs, and the relationship of interstate NTS loop cost recovery under access charges to the joint board recommended decision.[10]

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[6] Such increases in local rates would be inconsistent with § 254(b) of the Act.
[7] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 961-3 (rel. Nov. 8, 1996) (Joint Board Recommended Decision).
[8] NPRM ¶ 60 (emphasis added).
[9] Id ¶ 61.
[10] Id at ¶ 61.

There are clear advantages associated with recovering non-traffic sensitive ("NTS") costs through flat charges. However, it may not be necessary to require small rate-of-return LECs to immediately implement a flat rate CCL. Instead, the Commission should allow, but not compel, rate-of-return LECs to apply any new CCL rate structure approved for price cap LECs. However, if the new CCL rate structure is adopted by a rate-of-return LEC, that change should be permanent. Such an approach was successfully used by the Commission when the alternative of price-cap regulation was adopted.[11]

Such an approach would allow the small LECs to respond to their individual market conditions and would be more consistent with the market based approach. Further, it would not require the Commission to attempt to establish a single fixed mechanism that would be appropriate for all circumstances.

Further, there is no risk that small LECs are recovering excessive revenues from the current CCL charges. The National Exchange Carrier Association ("NECA") "caps" recovery of NTS loop costs for most smaller LECs at $7.69 per line per month. The necessary revenues are recovered from IXCs through CCL charges, which are adjusted by NECA from year to year along with other access rates, to meet, but not exceed, the allowed overall earnings levels on an individual pool basis. Refunds are provided to IXCs if earnings levels are exceeded.[12] As a result, earnings levels remain controlled under the current system for rate of return LECs.

[11] See, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd 6786, (1990) (LEC Price Cap Order); Erratum, 5 FCC Rcd 7664 (Com. Car. Bur. 1990); modified on recon., 6 FCC Rcd 2637 (1991) (LEC Price Cap Reconsideration Order); aff'd sub nom. National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

[12] Competitive Telecommunications Assn. v. FCC, 87 F.3d 522 (D.C. Cir. 1996) ("Comptel").

D. Different Flat Rate Charge Mechanisms May be Appropriate for Large and Small LECs.

Several alternatives for recovery, including a flat, per line charge to be paid by IXCs were identified.[13] If a flat rate CCL is required for all LECs, the Commission should not assume that the particular recovery mechanism adopted for large LECs is necessarily appropriate for small LECs because of significant differences between the transport networks of large and small LECs.

For example, the NPRM notes that a flat rate CCL could be imposed based on the customer's presubscribed interexchange carrier ("PIC"). Unlike some of the other methods (based on trunks) for assignment of a flat rate CCL, a recovery mechanism based on PIC's would be feasible for small LECs to administer. Even with "Two PIC" interLATA and intraLATA 1+ presubscription, the interstate CCL could be accurately directed to the interLATA PIC. Such a system would eliminate issues relating to usage based recovery of NTS costs and is feasible and accurate for small LECs.

The NPRM requested comment on the significance of "dial-around" if a flat rate is imposed based on "PICs".[14] "Dial-around" does lead to cost avoidance by some IXCs, which could be prevented by a system based on total revenues. A bulk billed system based on either PICs or relative revenues could be implemented for small LECs.

Another alternative for recovering of NTS costs relies upon the relative number of dedicated trunks used by IXCs.[15] Such an approach is <u>not</u> feasible for many smaller LECs, however, because most IXCs serving smaller LECs do not use dedicated trunks. This is clearly the case for virtually all small LECs that participate in Centralized Equal Access ("CEA"), where

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[13] NPRM ¶ 60.
[14] Id.
[15] NPRM ¶ 61.

the CEA tandem switch is the initial location where the IXCs' traffic is identified to specific IXCs. As a result, the number of direct trunks can not be used as a basis for allocating an individual small LEC's NTS costs among the IXCs.

Further, imposing NTS costs based on the relative number of trunks or ports in use may encourage IXCs to use fewer trunks or ports than are needed, leading to adverse impacts on service quality. Clearly, degradation of service is too great a price to pay for addressing the economic inefficiency associated with usage based recovery of NTS costs.

II. IXCS MAY NOT PASS THROUGH TO THEIR END USERS DIFFERENT FLAT RATE CCL CHARGES.

As rate recovery mechanisms are changed, it is essential that end-user customers not lose the protections that are intended in the Act, including protections against geographically deaveraged rates for long distance services. There is no indication that the Act's protections are intended to apply only to an IXC's usage based charges, and must apply to any flat rate charges that IXCs may seek to impose on their customers.

A. Section 254(g) Precludes IXCs From Passing Through to Their Customers Different Flat Rate CCL Charges.

The NPRM requests comment on whether Section 254(g) would preclude an IXC from directly passing through to its customers the flat rate CCL paid by the IXC for that customer's specific local loop if the flat rate CCL paid by the IXC varied among states or between urban and rural areas within a state. [16]

Section 254(g) clearly precludes IXCs from directly passing through different CCLs. Section 254(g) protects customers from incurring: 1) different "rates" for "interexchange

[16] NPRM ¶ 63.

telecommunications services" between states; and 2) different "rates" for "interexchange telecommunications services" within a state. Section 254(g) reads in part:

> [T]he Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

(Emphasis added.) There is no indication that the term "rates" was intended to be limited to usage based rates and no indication that any difference was intended based on whether the "rate" charged by the IXC reflected amounts paid to other carriers by the IXC.

A flat rate end user charge imposed by an IXC is certainly a "rate charge" for "interexchange telecommunications service", since there is no other reason for the end user customer to pay such a rate. As a result, it is clear that Section 254(g) precludes IXCs from imposing on their customers in different states differing interstate flat-rate charges and similarly precludes different intrastate flat rate charges between urban and rural areas of a state.

Such a conclusion is consistent with the Conference Committee Report which noted the broad scope of Section 254(g), saying in part:

> New section 254(g) is intended to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers.

(Emphasis added.)[17] Clearly, the Conference Committee Report reflects no intent to exclude charges to recover NTS costs from the scope of section 254(g). Rather, broad protection of

[17] See, Conference Committee Report, Section 254, p. 132.

consumers against the harms of higher rates in rural areas is intended. Such an intent requires no less protection against deaveraged flat rate charges than against deaveraged usage based charges.

The Commission has also recognized the broad coverage intended by section 254 (g), saying in part:

> The legislative history of this section indicates that Congress intended for us to codify our pre-existing policies of rate averaging and rate integration, and to apply these policies to all carriers.[18]

The Commission also rejected proposals to limit the protection to only residential rates, saying in part:

> As required under the Act, our rule will apply to all providers of interexchange telecommunications services and to all interexchange "telecommunications services", as defined in the Act. This definition does not create any exception for nonresidential services. We, therefore, reject the contention by AT&T and MCI that Section 254(g) applies only to residential services.[19]

The Commission has allowed only a very narrow exception to the prohibition against geographic deaveraging, allowing recovery of state specific taxes.[20]

The Commission should continue to recognize that Section 254(g) is intended to provide broad protections to consumers from not only usage based rate deaveraging by IXCs but also from flat rate deaveraging. Allowing flat rate deaveraging would clearly violate the fundamental protection intended by section 254(g).

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[18] Report and Order, Docket No. 96-61; FCC 96-331 ("Section 254(g) Implementation Order")
[19] Section 254(g) Implementation Order, ¶ 9
[20] Id. ¶ 12.

B. The Commission Should Not Forbear Application of Section 254(g).

The NPRM requested comment on whether there are conditions sufficient to require the Commission to forbear application of Section 254(g) to allow direct pass through of flat rate CCL charges by IXCs.[21] For the reasons already described in the Section 254(g) Implementation Order, the Commission may not forbear application of Section 254(g) to allow IXCs to pass through to end users interstate flat rate CCL charges that vary between different states or intrastate flat rate CCL charges that vary between areas within a state.

The Commission expressly rejected proposals that regional differences in access rates and other costs justify long distance rate differentials.[22] Although the Commission recognized that IXCs pay access charges that vary by region, the Commission rejected forbearance saying in part:

> With respect to the first prong of the forbearance test, we believe that establishing a broad exception to Section 254(g) for low-cost regions entails a substantial risk that many subscribers in rural and high cost areas may be charged more than subscribers in other areas. Accordingly, we cannot conclude that enforcing our rate averaging requirements is unnecessary to ensure just and reasonable and nondiscriminatory charges for subscribers. We also see no basis in the record to conclude that it is unnecessary to enforce Section 254(g) to ensure protection of consumers. We are concerned that widespread deaveraged rates for interexchange services could produce unreasonably high rates for some subscribers.[23]

(Emphasis added.)

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[21] ¶ 63.
[22] Section 254(g) Implementation Order, ¶¶ 33,39.
[23] Section 254(g) Implementation Order, ¶ 39.

Different flat rate CCL charges that may be paid by IXCs are no more compelling and provide no more of a basis for geographically deaveraged charges to end users than the access charge differences rejected by the Commission in Section 254(g) Implementation Order.[24]

Subscribers in high cost areas will surely "be charged more than subscribers in other areas" and could experience "unreasonably high rates" if IXCs are allowed to directly pass through higher flat rate CCL charges from higher cost areas.[25] This harm to rate payers is no less merely because it is the result of flat rate charges. The harm may even be greater, because there is a risk that some customers would forego toll service rather than pay a high minimum monthly flat rate. Such a result is directly contrary to the universal service goals of the Act. The Commission should not allow such a result by exercise of forbearance.

C. Universal Service Funding May Be Appropriate for Some IXCs.

The NPRM requested that parties address the affect of Section 254(g) if CCL charges vary among states but end user rates may not vary[26]. The effect of such a combination would be much like the effect of regional differences in access charges, which the Commission rejected as an insufficient basis for forbearance or an exception to the rule.[27] Clearly, Congress did not intend that end-user customers absorb deaveraged costs.[28] Instead, if such rates are deemed to impose an excessive burden on IXCs, then these costs should be included in universal service funding. Such a burden should not, however, be shifted to end user customers in high cost service areas.

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[24] The FCC similarly declined to forebear applying its averaging rules to regional or small IXCs, not withstanding their arguments of such forbearance was necessary to allow them to compete. Section 254(g) Implementation Order, ¶ 40.

[25] Section 254(g) Implementation Order, ¶ 39.

[26] NPRM ¶ 63.

[27] Id. at 3B.

[28] See, Conference Committee Report p. 132.

III. RAISING THE SLC CAP ON SECOND RESIDENTIAL LINES AND MULTILINE BUSINESSES WOULD BE INAPPROPRIATE.

The NPRM proposes to increase the cap on the SLC for the second residential line and for all lines of multiline businesses to the interstate per loop cost to allow incumbent price cap LECs to recover their costs in a manner consistent with the way the costs are incurred.[29] The NPRM invites comments on this proposal and on whether any such changes should be extended to rate-of-return LECs[30]. For the reasons set forth below, increasing the SLC cap to the interstate local loop costs for second residential lines and all lines of multiline businesses would be inappropriate, particularly for smaller LECs.

A. Increasing the SLC Cap Will Increase Prices, Decrease Demand and Conflict With Universal Service Goals.

Many rural LECs have loop investments and loop costs that are substantially above the national average. As a result, increasing the SLC cap to the rural LEC's individual interstate loop costs is likely to lead to significant price increases on lines subject to the increased cap. Such price increases are likely to significantly reduce demand for second lines by residences and all lines of multiline businesses. Such a result is counter productive and inefficient, because most installed LEC distribution plant and drop facilities are designed to allow and encourage use of a second lines, which reduces the average per line costs. Further, increasing the price for second residential lines is directly contrary to the goals of promoting comparability of both rates and services between urban and rural areas.[31] Second lines are often used by access to Internet

[29] NPRM 65.
[30] Id.

[31] Section 254(b)(3).

and other information services which are within the category of advance services that the Act intends to promote.[32]

B. Selectively Increasing the CAP on the Same Lines Will Encourage Misreporting by Customers which LECs Cannot Prevent.

In addition to the problems previously noted, some customers will be encouraged to misreport the status of second lines or multiline businesses if there is a significant net price differential based on the SLC. It is quite probable that customers that install a second line for family use would be strongly encouraged to declare such lines the "primary" lines of other spouse, a child or other family member. Similarly, multiline businesses would be encouraged to declare that several different businesses were occupying a single premise, rather to incur the additional costs on the separate lines.

Small LECs are in no position to prevent such misreporting. Accordingly, such an approach is likely to fail in application in many instances.

C. Section 254(e) Does Not Require Geographic Deaveraging of SLCs.

The NPRM also invites comments on whether geographic averaging of SLCs is an implicit subsidy that is inconsistent with the requirements of Section 254(e).[33] Section 254 is intended to promote universal service in high cost areas, including reasonable comparability of rates and services between urban and rural areas.[34] Continued averaging of the SLC is completely consistent with this goal. If SLCs are deaveraged, the result will either be increased local rates in high-cost areas (which would violate the Act) or an increase in the burden on the

[32] Section 254(b)(2).
[33] NPRM ¶ 67.
[34] Section 254(c)(3).

Universal Service Fund. In addition, the Joint Board recommended that SLCs should not be increased on primary residential lines or for single line businesses.[35]

IV. ANY NEW TRANSPORT RATE STRUCTURE PROPOSALS SHOULD REFLECT UNIQUE CHARACTERISTICS OF SMALL LECS.

The NPRM tentatively concluded that policies regarding transport rates would be applicable to both price-cap and rate-of-return incumbent LECs.[36] While application of the new transport rate structure to small LECs is generally appropriate, it is critical that certain unique characteristics of small LECs be reflected in exceptions to the general rules for transport rate restructure.

A. LECs Participating in CEA Offerings Should not Be Required to Implement Rate Structure Changes that Are Not Appropriate For CEA Providers.

In the First Transport Order, the Commission ruled that some modifications of the transport rate structure were not appropriate for incumbent LECs that participated in CEA projects.[37] Many members of the Minn. Indpt. Coal. provide equal access through CEA. As a result, customers of Minn. Indpt. Coal. member LECs have had full "2-PIC" equal access for both interLATA and intraLATA interexchange service since 1992 and have access to over 30 competing IXCs. Such results would not be possible without CEA. Network arrangements necessary for CEA are unlike the network arrangements typical for larger LECs.

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[35] Joint Board Recommendation, ¶ 754.
[36] NPRM ¶ 53.
[37] Transport Rate Structure and Pricing, CC Docket No. 91-2123, 7 FCC Rcd 7006 (1992) (*First Transport Order*); *recon.* 8 FCC Rcd 5370 (1993) *(First Transport Reconsideration Order); further recon.* 8 FCC Rcd 6233 (1993) *(Second Transport Reconsideration Order); further recon.* 10 FCC Rcd 3030 (1994) *(Third Transport Reconsideration Order); further recon.* 10 FCC Rcd 12979 (1995) *(Fourth Transport Reconsideration Order).*

In this proceeding, the Commission should recognize that certain transport rate structure changes that are appropriate for larger LECs are not appropriate for incumbent LECs that participate in CEA.[38]

B. The Benefits of Restructuring Should Be Compared to the Costs of Implementing the Restructured Rates.

In deciding whether to implement a proposed change, the Commission should balance the benefit of the change against the cost of implementation, recognizing that the balance may be different for large and small LECs.

The NPRM inquired whether it would be appropriate to require the development of per set-up charge for call-setup cost-recovery, instead of the current charge based on minutes of use ("MOU").[39] Development of such a call-setup charge would be an appropriate refinement for all LECs, including small LECs, because the cost of developing such a charge is not excessive and because recovery of such costs based on a per setup charge better matches the way the costs are incurred. In this situation, the costs of implementing the change are less significant than the benefits resulting from the change, probably for all LECs.

The NPRM also requests comment on whether incumbent LECs should be permitted or required to develop peak/off peak pricing for tandem switched transport services.[40] Requiring the development of peak/off-peak rates by small LECs is likely to impose significant administrative costs and burdens on the small LECs and may be difficult, if not impossible, for some to complete. As a result, it would be appropriate to allow, but not require, small LECs to

[38] NPRM ¶ 84.
[39] NPRM ¶ 89 & NPRM Section IIIC.
[40] NPRM ¶ 77.

develop peak/off peak pricing for tandem switched transport services because the cost of developing such pricing would outweigh any benefit for many small LECs and their customers.

C. Transport Usage Levels and Patterns Differ Significantly Between Large LECs and Small LECs and Should be Reflected in Any New Rules.

The Minn. Indpt. Coal. agrees with USTA that assuming monthly usage of 9000 MOU per transport circuit is very unrealistic for low volume, rural routes.[41] The result of using an unrealistically high assumed MOU for rural transport circuits is that tandem switched transport rates for rural LECs fail to recover the cost of transport service.[42] The Commission should develop more realistic volume estimates for circuits in low density rural areas.

The Minn. Indpt. Coal. also agrees that DS3 circuits are not used in rural areas to the same extent as in higher volume areas.[43] In fact, very few members of the Minn. Indpt. Coal. have any DS3 in operation for switched access transport. The assumption that DS3 usage levels are the same in Large LEC and Small LEC areas would also lead to tandem switched transport rates that fail to recover the rural LECs' costs of providing those services.

The Minn. Indpt. Coal. also agrees with USTA that these assumptions are also unrealistic in host-remote situations.[44] There are virtually no DS3 circuits in use by any member of the Minn. Indpt. Coal. for host/remote connections. The incorrect assumption that there is comparable DS3 usage levels in host-remote situations also leads to tandem switched transport rates for rural LECs that fail to recover the related costs.

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[41] NPRM ¶¶ 104, 105.
[42] Id.
[43] NPRM ¶ 104.
[44] NPRM ¶ 105.

The Commission noted several alternatives for adjusting the costs in the Transport Interconnection Change ("TIC").[45] The Minn. Indpt. Coal. agrees with the Commission's tentative conclusion that it would be excessively costly to correct all identifiable cost misallocations.[46] Rather, the Commission should reassign those costs that are readily identifiable and quantifiable.[47] Further, the Commission should recognize that costs that are readily identifiable and quantifiable for large LECs may not be for small LECs.

Finally, there is no basis to assume categorically that certain investment costs included in the TIC should be removed because of imprudence or because such investments are no longer used and useful.[48] Such an issue cannot be determined on an industry-wide basis, but rather must be determined on a company-by-company basis. There is no justification for making industry-wide assumptions which may be wholly inaccurate in the case of individual LECs. Application of such an assumption would clearly violate fundamental due process and lead to an unconstitutional confiscation.[49]

V. LECS MUST BE ALLOWED TO RECOVER ALL PRUDENT INVESTMENTS.

The NPRM requested comment on whether incumbent LECs are entitled to recover some or all of the difference between their embedded, actual costs and forward-looking economic costs.[50] For reasons set forth below, if a change to forward-looking costs is imposed by the

[45] NPRM ¶¶ 113, 116, 117, 118.
[46] Id. ¶ 116.
[47] Id. ¶ 117.
[48] NPRM ¶ 120.
[49] See, discussion at Sections V.C,D,E below.
[50] NPRM ¶ 256